IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 2541 of 2005
Date of decision : 6.12.2006

United India Insurance Co. Ltd.,Chandigarh.

.....Petitioner.

Versus

Kashmiri & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Varun Katyal,Advocate
for Mr. D.R.Bansal,Advocate
for the appellant.

Mr. G.S. Gandhi, Advocate
for the respondents.

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VINOD K. SHARMA,J.(ORAL)

Present appeal has been filed by the United India Insurance Co. Ltd. Challenging an award dated 2.3.2005 under Section 163-A of the Motor Vehicle Act, 1988 (for short "the Act") passed by the learned Motor Vehicle Claims Tribunal, Rewari vide which the Tribunal has been pleased to award a sum of Rs. 2,78,800/- along with interest at the rate of 6% per annum from the date of petition till its realisation.

The case set up by the claimants was that on 29.5.1998 deceased Sumer Singh started his journey from Rewari in truck No. HR-36-1361 along with Driver Ramesh son of Sh. Nand Lal. When they entered the Rajasthan, he was done to death under the extremist activities, about which the respondents totally showed their ignorance. The dead body of deceased Sumer Singh was brought to his native village in truck No. HR-36-1361 and

a police case was registered in Police Station Bawal on the statement of Rajender Kumar son of Sh. Bakhtawar. It was further claimed that in order to occupy the truck, his murder was committed by poisoning him. On this allegations the claim petition was filed under Section 163-A of the Act claiming total compensation of Rs. ten lacs along with interest @ 18% per annum from the date of accident till its realisation. It was claimed that the deceased was aged 39 years of age at the time of accident and was earning a sum of Rs. 3200/- per month.

The petition was contested by the owner Smt. Trivani Devi on the allegations that the present petition was not competent as deceased Sumer Singh had not died in any motor vehicle accident and died due to consuming excessive ethyl alcohol which was his wrongful act and it was beyond the control of respondent No.1 for which respondent No.1 could not be held liable. It was also denied that Sumer Singh had died in course of employment of answering respondent because Sumer Singh died due to consuming alcohol during the Course of employment therefore, this wrongful act of deceased Sumer Singh was beyond the reach and control of respondent No.1. It was also denied that a sum of Rs. 10,000/- was spent on the last rites of deceased Sumer Singh.

Respondent No.2, Insurance Company also contested the claim petition and it was claimed that the driver did not have a valid driving licence and it was prayed that the claim petition be dismissed.

On the pleadings of the parties, the learned Tribunal was pleased to frame the following issues :-

1. Whether Sumer Singh son of Bakhtawar Singh died in a Motor Vehicle Accident arising out of the use of vehicle No. HR-36-1361, as alleged ? OPP
2. Whether the petitioners are entitled to compensation, if so from whom and to what amount ?OPP
3. Relief.

By recording a finding that Sumer Singh son of Sh. Bakhtawar Singh died in a Motor Vehicle Accident arising out of the vehicle No.HR-36-1361. It was awarded compensation under Section 163-A of the Act. It is pertinent to mention that in support of the allegations, the evidence produced by the claimants was that the dead body of Sumer Singh was brought by the Driver and other persons of Rewari to village Bawal and she was told that her husband had given lift to 2/3 persons and something was given to the deceased in alcohol due to which the death has been caused. Thus, no evidence was produced on record to show whether the deceased died in any motor vehicle Accident nor any evidence produced to show that the death of deceased had occurred in the process of stealing of the truck or it was an incidental act in order to achieve the act connected with the Motor Vehicle. Rather the evidence brought on record showed that death had occurred due to excessive consumption of ethyl alcohol which resulted in death due to poison. Thus, the judgment of the Hon'ble Supreme Court in the case of ***Rita Devi (Smt.) and Others Versus New India Assurance Co. Ltd. and another (2000) 5 Supreme Court Cases 113*** would not be attracted to this case to hold that death had occurred due to the Motor Vehicle Act.

The learned Tribunal placed reliance on the judgment of the Hon'ble Supreme Court reported in ***Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More AIR 1991 Supreme Court 1769*** to come to the conclusion that death of Sumer Singh had occurred due to the motor vehicle accident as he was traveling in the vehicle at the time of his death. It would be relevant to refer to the finding of the Hon'ble Supreme Court in the case Shivaji Dayanu Patil and another (Supra) to find out whether in the given circumstances it could be said that the death of Sumer Singh had occurred due to motor vehicle accident. The Hon'ble Supreme Court in Para Nos. 36 & 37 of the said judgment has held as under :-

> "36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle ? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on slopping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately

resulted in the explosion and fire were not unconnected out related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. The petrol tanker No. MKL 7461.

37. Shri Sanghi has also raised a question as to the procedure to be followed by the Claims Tribunal while adjudicating claims u/S. 92A of the Act and has submitted that such claims have to be adjudicated upon like other claims u/S. 110A of the Act and that claimant must first adduce evidence to establish his/her case and that the owner as well as the insurer of the vehicle in question must have a right to adduce evidence to rebut the same. In this context, it may be mentioned that procedure for adjudication of a claim petition u/S. 110A of the Act by the Accident Claims Tribunal is contained in Rules 291 to 311 of the Bombay Motor Vehicles Rules, 1989, (hereinafter referred to as 'the Rules'). The said Rules prescribe a form for filing a claim petition and the documents to be filed along with it (R.291),

> examination of the applicant (R. 293), issue of notice to the opposite party (R. 297), filing of written statement by the opposite party (R. 298), framing of issues (Rule 299), recording of evidence (Rr.300 and 301), local inspection (R.302) and judgment and award of compensation (Rule 306)."

The reading of the judgment shows that the Hon'ble Supreme Court was interpreting the word 'arising out of use of vehicle'. In this situation, it was held that any accident which occurs on account of the accident arising out of the use of vehicle would cover the case under the provisions of Motor Vehicle Act. It was relevant to refer to Section 163A of the Motor Vehicle Act under which the present claim petition was filed :

> "163A. Special provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> *Explanation.- For the purposes of this sub-section, "permanent disability"* shall have the same

> meaning and extent as in the Workmen's Compensation Act, 1923(8 of 1923).
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette. from time to time amend the Second Schedule."

The reading of this Section clearly envisages that petition can be maintained before the Tribunal only in case there is a permanent disablement or death on account of motor vehicle accident and not otherwise. In absence of any accident no petition would be competent under the Motor Vehicle Act. In the present case it is admitted that the vehicle in which deceased Sumer Singh was traveling had not met with any accident. His death was on account of poison given to him in alcohol. It was also claimed in the evidence that deceased has been murdered with an object to snatch the truck, however, there is no evidence in support of this contention and, therefore, the case set up by the claimants was not of an accident. The finding, therefore, recorded on issue No.1 by the learned Tribunal cannot be sustained.

Mr. G.S. Gandhi, learned counsel appearing on behalf of the respondents has contended that once a person dies while using a motor vehicle in employment then it has to be treated to be a case of motor vehicle accident and, therefore, petition would be competent. In support of this contention he also placed reliance on the judgment of the Hon'ble Supreme Court in the case Shivaji Dayanu Patil and another (Supra). This contention of the learned counsel for the respondents cannot be accepted. There can be no presumption of accident. The accident has to be there before any petition under Motor Vehicle Act can be maintained. The judgment of the Hon'ble Supreme Court does not support the case put up by the petitioner nor finding recorded by the Tribunal on issue No.1 can be upheld by relying upon the said judgment. Accordingly, finding of the learned Tribunal on issue No.1 is reversed. It cannot be said that Sumer Singh died in motor vehicle accident arising out of use of vehicle No. HR-36-1361. In the absence of an accident and petition being not competent the claim raised against the Insurance Company would be deemed against the terms of insurance policy.

In view of the finding recorded above, the finding on issue No.1 cannot be sustained. However, it would be open to the petitioners-respondent to move under Workmen's Compensation Act so as to claim compensation from the owner, if so advised, in accordance with.

Accordingly, appeal is allowed, impugned order is set aside.

6.12.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**